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February 14, 2006

Hon. Frederick J. Scullin, Chief Judge
United States District Court
Northern District of New York
James Hanley Federal Building
PO Box 7255
Syracuse, NY 13261-7255

Re: United States v. Gerald Thomas, Jr., et al.
05-CR-217 (FJS)

Dear Judge Scullin:

We are the attorneys for the defendant, Gerald Thomas, Jr., in the above entitled criminal action. As you are aware, pre-trial and supplemental pre-trial motions have been made and argued, and a decision is pending. In the meantime, the Government served additional disclosure material and obtained a superceding indictment. As a result, additional supplemental pre-trial motions were made. These have not yet been argued. Now, the government has obtained a second superceding indictment.

Under these circumstances, we request an opportunity to make additional pre-trial motions addressed to the recently disclosed material and to the superceding indictment. We also request that the trial date be moved back to early July, 2006 in order to accommodate these requests. We understand that the co-defendant, Gerald Thomas, Sr., already lost his job so that any delay would not affect that issue.

I have discussed these matters with Assistant United States Attorney Broton. He has no objection to allowing for time to make additional motions, but he says that those motions should be limited to just the new material in the second superceding indictment. We respectfully disagree.

The government's conduct in this matter has been tardy. There was no need for any superceding indictment, and certainly no need for any second superceding indictment. The original indictment was filed on May 5, 2005. The latest date mentioned in the second superceding indictment is July 18, 2003, and co-defendant, Gregory Thomas, had already been tried and

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Hon. Frederick J. Scullin, Chief Judge

February 13, 2006

convicted in New York State court for crimes arising out of the same series of transactions. Presumably, all of the investigatory product generated before and during that prosecution was readily available to the government prior to the first indictment in this case. So, one must ask, "What did the government know when they obtained the second superceding indictment that they didn't know, or could not, with the exercise of reasonable diligence, have known when the obtained the first superceding indictment?" Likewise, "What did the government know when they obtained the first superceding indictment that they didn't know, or could not, with the exercise of reasonable diligence, have known when the obtained the original indictment?"

The answers to both questions seems to be, "Nothing." So, what was the need for three indictments in the same case? The obvious answer is to prolong the proceedings and prejudice the defendants. Disposition by trial is delayed, the expenses of defense are increased, the defendants and their attorneys are worn down, resistance to the government's will is eroded, a plea on the government's terms is made more likely, and the prosecution is more likely to succeed regardless of the underlying merit, or lack of merit, of the government's case.

I have discussed this request with Richard B. Spinney, Esq., the attorney representing defendant Gerald Thomas, Sr. He has no objection to the relief requested. Due to the unfortunate situation evidenced by Attorney Madison's latest motion, I have not discussed it with George F. Hildebrandt, Esq., the newly appointed attorney for defendant, Gregory Thomas. I can't see how this brief delay would prejudice Gregory, since Mr. Hildebrandt, like any attorney new to this case, will need time to get up to speed, anyway.

Thank you for your consideration.

Very truly yours,

Michael A. Jacobs

*Request is granted in part and
Denied in part. Please refer to
scheduling noted for new deadline.*

SO ORDERED

F. Scullin
FREDERICK J. SCULLIN, JR.
CHIEF JUDGE

2/16/06

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